IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R.S.A.No.386 of 2006

Date of Decision : October 09, 2006.

Uttari Haryana Bijli Vitran Nigam
Limited, Panchkula and others ..... Appellants

Vs.

Amar Singh ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Ramesh Sharma, Advocate
for the appellants.

Mr.S.N.Saini, Advocate
for the respondent.

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P.S.Patwalia, J. (Oral) :

C.M.No.770-C of 2006 :

By way of the present application, the applicants seek condonation of 32 days in filing the present appeal. Notice of the said application was given to the respondent. No reply has however been filed. A reading of the application would show that after the certified copy of the judgment was prepared and delivered to the appellant, opinion of the Legal Remembrancer H.V.P.N., Panchkula was sought and thereafter the appeal was filed. It is in this process that the delay has occurred. For the reasons

aforementioned I find there to be sufficient cause for condoning the delay of 32 days in filing the appeal. The application is allowed and the delay in filing the present appeal is therefore condoned.

Main Case :

The present Regular Second Appeal has been filed by the defendant-Board aggrieved against the concurrent findings recorded by the trial court and the lower appellate court decreeing the suit filed by the plaintiff. It was the case of the plaintiff that on revision of the pay scales he had opted for the grant of revised pay scale from 1.4.1986. Acting on this option the plaintiff was granted revised pay scale from 1.4.1986. However subsequently the date of grant of revised pay scales was changed to 1.1.1986. The stand of the appellant-Board was that this was done as the plaintiff had not exercised his option within prescribed period of three months. Aggrieved against this action the plaintiff had filed the suit stating that his pay was rightly fixed earlier and he should be granted revised pay scale as granted to him earlier from 1.4.1986.

The trial court as also the lower appellate court has held that the plaintiff had indeed exercised his option to get the revised pay scale from 1.4.1986 and rejected the stand of the Board that no option had been exercised by the plaintiff. The relevant observations of the lower appellate court are as hereunder :-

> ***"10.*** *In the present suit the plaintiff has challenged the action of the defendants vide which they had changed the date of option of fixation of revised pay scale from 1.4.1986 to 1.1.1986. However, the defendants have pleaded that since*

the fixation was improperly made as the plaintiff had not exercised the option within the prescribed period of three months from the date of issuance of notice/circular issued by the defendants. Further stand of the defendants for changing the date of option is that the option of the concerned official was not found attached with the service book nor the same was received by the office concerned and thus according to the defendants the plaintiff had not exercised his option. Suffice it to mention that vide office order No.384 the Haryana State Electricity Board had revised the pay scales of various categories of its employees who were on regular, ad hoc and work charged basis. It was also stipulated in the said order that the option under the proviso to para 4 of the above order shall be exercised in writing in the form appended as Annexure B so as to reach the concerned drawing and disbursing officer within three months from the date of issue of the order. The plaintiff has categorically pleaded that he had properly exercised the option and that too within the prescribed period. The copy of form of option is Ex.P-1/U/D.1 which shows that the plaintiff had exercised his option as 1.4.1986 being the date of next increment. The said option is shown to have

been signed by Sub Divisional Officer on 1.10.1987. From this document alone it is clear that the plaintiff had exercised his option within a period of three months as the aforesaid order was issued on 19.8.1987. At the same time, it is clear from the aforesaid document that the option had been duly received by the defendants. In view of the same it cannot be said that the plaintiff had not exercised his option within the stipulated period."

In view of the aforesaid findings while on merits the claim of the plaintiff has been allowed, however arrears have been confined to a period of 38 months prior to the date of filing of the suit. During the course of hearing learned counsel for appellant could not point out any infirmity in the aforesaid findings recorded by the courts below. I am of the opinion that the courts have examined the matter in the light of the evidence led by the parties and have rightly concluded that the plaintiff had exercised his option to get revised pay scale from 1.4.1986.

In the circumstances of the case no substantial question of law arises for determination in this Regular Second Appeal and the same is accordingly dismissed.

October 09, 2006 (P.S.Patwalia)
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